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Hearing Date: June 15, 2006, 10:00 a.m. EDT
Objection Deadline: May 10, 2006

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
DELPHI CORPORATION, et al., : **Chapter 11**
: **Case No. 05-44481 (RDD)**
: **(Jointly Administered)**
Debtors. :
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**THYSSENKRUPP BUDD SYSTEMS, LLC, THYSSENKRUPP WAUPACA, INC. AND
THYSSENKRUPP STAHL COMPANY'S (COLLECTIVELY, "TK BUDD
COMPANIES") MOTION PURSUANT TO BANKRUPTCY CODE §§ 362 AND 553 FOR
ORDER LIFTING THE AUTOMATIC STAY TO PERMIT TK BUDD COMPANIES TO
EXERCISE RIGHT OF SETOFF**

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

ThyssenKrupp Budd Systems, LLC ("Systems"), ThyssenKrupp Waupaca, Inc. ("Waupaca") and ThyssenKrupp Stahl Company ("Stahl") (collectively, "TK Budd Companies") creditors and/ or parties in interest in the above captioned jointly administered Chapter 11 case of Delphi Corporation ("Delphi") by and through undersigned counsel, moves the Court for an order under §§ 362(d) and 553 of the Bankruptcy Code granting TK Budd Companies' motion for relief from the automatic stay to exercise its setoff rights.

I. STATEMENT OF JURISDICTION AND STATUTORY PREDICATE

1. The Court has jurisdiction over this core proceeding and contested matter pursuant to 28 U.S.C. §§ 1334, 157(b)(2)(G) and (M), and venue is proper pursuant to 28 U.S.C. § 1408 et seq. The statutory basis for this motion is §§ 362(a), (d), and 553 of the Bankruptcy Code. Rule 4001 of the Federal Rules of Bankruptcy Procedure and Local Rule 4001-1 Local Bankruptcy Rules for the Southern District of New York govern this proceeding.

II. FACTUAL BACKGROUND

1. On October 8, 2005 (the "Petition Date"), the above captioned debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (hereinafter all references to title 11 of the United States Code, 11 U.S.C. 101-1334, as amended, are referred to as the "Bankruptcy Code"), thereby commencing these bankruptcy cases (collectively the "Bankruptcy Case"). Since the Petition Date, the Debtors have continued to possess and manage their assets and operate their business as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, Systems purchased certain goods from Delphi. Currently, Systems is indebted to Delphi for goods purchased pre-petition in the total amount of \$351,295.92 (the "Systems' Indebtedness").

3. Prior to the commencement date, Delphi purchased goods from Waupaca and Stahl. Waupaca and Stahl are affiliates of Systems.

4. Currently, Delphi and is indebted to Waupaca for goods purchased pre-petition in the amount of \$114,352.63.

5. Currently, Delphi is indebted to Stahl for goods purchased pre-petition in the amount of \$92,739.83. Collectively, Delphi's indebtedness to Waupaca/Stahl totals \$207,092.46 (the Waupaca/Stahl Indebtedness").

6. Pursuant to Systems' Purchase Orders and the Terms and Conditions incorporated therein:

Buyer shall be entitled at any time to set off any sums owing by Seller to Buyer or any of Buyer's affiliated companies, against sums payable by Buyer in connection with any of Seller's accounts regardless of the purchase orders or contracts from which such debits or credits arise.

A copy of the Terms and Conditions is attached hereto as Exhibit A.

7. Thus, pursuant to the Terms and Conditions, Buyer (Systems) may setoff sums owed to it by Seller (Delphi) to Buyer or any of Buyers affiliated companies (Waupaca and Stahl) against sums payable to Buyer. As set forth in the argument below, this triangular setoff is permitted pursuant to an agreement of the parties. Based on the Terms and Conditions, Systems has a valid right of setoff in the amount of \$207,092.46.¹

III. MEMORANDUM OF LAW

1. As set forth in the memorandum of law filed contemporaneously herewith in support of this Motion, the Bankruptcy Code preserves a creditor's right to setoff if such a right exists under state law. TK Budd Companies have such a right of setoff. Moreover, because TK Budd Companies have such a right, cause exists for relief from the automatic stay.

IV. NOTICE

1. Notice of this Motion will be provided in accordance with this Court's Order dated October 14, 2005, establishing case management and notice procedures in these

¹ TK Budd Companies delayed filing this Motion because it received a demand letter from Delphi to pay the Systems Indebtedness. TK Budd Companies attempted to settle the demand outside of Court, but was advised by Delphi's counsel that the offset issues could not be resolved in the context of the demand letter.

Chapter 11 cases. No further or other notice need be provided. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE TK Budd Companies respectfully requests the Court enter an Order:

- A. Granting the Motion;
- B. Lifting the automatic stay allowing TK Budd Companies to exercise their setoff rights;
- C. Granting such other relief as the Court deems just under the circumstances.

RESPECTFULLY SUBMITTED this 20th day of April, 2006.

Respectfully submitted,

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